

September 5, 2009

**Via Email and Hand Delivery**

Hon. Shira A. Scheindlin  
United States District Judge  
U.S. District Court, Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *City of New York v. ExxonMobil*, 04 CV 3417 (SDNY)  
**Dominguez Deposition**

Dear Judge Scheindlin:

Plaintiff City of New York would like to play selected portions of the September 12, 2000 deposition of Mr. George S. Dominguez during the week of trial starting on September 8. The selection originally sent to ExxonMobil to provide an opportunity for counter-designation and objection is attached to this letter as Exhibit 1. Counsel for ExxonMobil “object[s] to the entirety of this deposition as irrelevant to any issue to be presented to the jury,” and claims that “[t]he only possible relevance of Mr. Dominguez’s testimony is to Plaintiff’s TSCA claim.” *See* Exhibit 2 (email correspondence from Lauren Handel to Marnie Riddle).

But Mr. Dominguez’s testimony is relevant to the City’s non-TSCA claims in at least two ways. First, the City is arguing to the jury in Phase 3B that ExxonMobil failed to warn the public and the government about the hazards of gasoline containing MTBE. Second, ExxonMobil has stated several times, including in their opening argument on Phase 3B, that the EPA was fully informed of all the relevant information about MTBE.

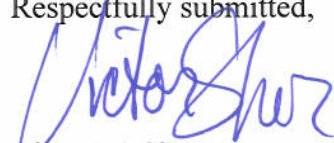
Mr. Dominguez, however, testifies that the MTBE Committee was aware that the EPA wanted information about “the presence and persistence of MTBE in ground water,” that Mr. Dominguez would have transmitted any such information to the EPA had he received it, and that the only reason he did not provide such information to the EPA was that the members of the MTBE Committee, including Exxon, did not provide it to him. (Exhibit 1, pages 25-26, Clips 89-90.) This means that Exxon failed to warn the EPA, and through the EPA both the government and the public, about the hazards of MTBE in ground water. This information is not merely relevant to the City’s TSCA claim, but also *plainly* relevant to the City’s failure to warn claim.

Mr. Dominguez's testimony about TSCA in the earlier portion of his deposition serves to lay a foundation for understanding that ExxonMobil was obliged to respond to EPA's requests for "health-related information and environmental information," and the MTBE Committee, of which Exxon was a member, served *in part* to provide responses to those requests. *See* Exhibit 1, page 2, Clip 6; page 15, Clip 53; page 14, Clip 52. In that context, Mr. Dominguez testifies that the MTBE Committee was created in order to provide information *to the government and the public* (Exhibit 1, page 12, Clip 44; page 14, Clip 52), not merely to provide TSCA compliance information to the EPA.

Before playing the video recording of Mr. Dominguez's testimony, the City would like to show, using documentary evidence, that Exxon was a member of the MTBE Committee between 1988 and 1995 (Exhibit 3) and that Exxon identified Mr. Dominguez and the MTBE Committee as a contact to the EPA for "all proceedings and developments concerning MTBE testing." (Exhibit 4 (PL-2590)). The City would also like to read into the record a portion of the testimony of Dr. Robert W. Biles (Exhibit 5) who states that "[t]he OFA [of which the MTBE Committee was a part] was chartered to represent Exxon in submissions" to the EPA. *See* Exhibit 5 (February 8, 2007 Deposition of Robert W. Biles, Ph.D., p. 199, lines 20-21).

In sum, Exxon's membership in the MTBE Committee, the fact that the MTBE Committee was created to serve as an information clearinghouse between MTBE gasoline producers and the public and government, and the fact that the MTBE Committee did not receive full information about the dangers to groundwater posed by MTBE are all highly relevant to the City's failure to warn claim, and Mr. Dominguez's testimony should be presented to the jury as part of Phase 3B of this trial. Accordingly, this Court should overrule Exxon's relevance objection and allow the testimony at issue to be shown.

Respectfully submitted,



Victor M. Sher


Cc: All Counsel via LNFS & Email

# EXHIBIT 1

MTBE - Phase 3

 Dominguez, George (Vol. 01) - 09/12/2000

1 CLIP (RUNNING 01:12:10.097)

 Dominguez 09.01.09 Trial Clip

GDO-002

99 SEGMENTS (RUNNING 01:12:10.097)



1. PAGE 10:03 TO 10:20 (RUNNING 00:00:47.967)

03 Q. Could you state your full  
04 name for the record please, sir?  
05 A. Certainly. George, S, which  
06 is Steven, Dominguez.  
07 Q. Can you provide us a brief  
08 history of your educational background?  
09 A. Certainly. I attended the  
10 City College of New York, Fairleigh  
11 Dickinson University. Obtained a BS and  
12 an MBA from Kentucky Christian, and much  
13 later on a Ph.D. from Sheffield  
14 University in Sheffield England.  
15 Q. What did you obtain your  
16 Ph.D. in?  
17 A. Oh, environmental health  
18 sciences, which was a concentration in  
19 material safety data sheets and hazard  
20 communication.

2. PAGE 13:10 TO 14:20 (RUNNING 00:01:46.134)

10 Q. If you could give us a brief  
11 description of your employment  
12 background?  
13 A. Certainly. I was employed  
14 briefly, as I mentioned earlier, as a  
15 medical technician. That was at  
16 Maimonides Hospital in Brooklyn, New  
17 York.  
18 Then I left them to join  
19 Ciba-Geigy Corporation in 1953. And I  
20 was employed at Ciba-Geigy until 1981.  
21 And I had various jobs therein.  
22 I left Ciba-Geigy in '81 to  
23 take on the presidency of Springborn  
24 Regulatory Services in Enfield,  
00014:01 Connecticut. And that was from '81 to  
02 '84.  
03 Then I joined SOCMA,  
04 Synthetic Organic Chemical Manufacturers  
05 Association, in 1984. I was employed by  
06 them until approximately 1990. I say  
07 approximately because in the latter part  
08 of my work with them, I became a  
09 part-time employee as opposed to a  
10 full-time employee, and then eventually I  
11 was just a consultant to them. And on an  
12 hourly rated basis.  
13 So, it was a transitional  
14 period there, but I left them in 1990.  
15 And then I started and still maintain my  
16 own business.  
17 Q. What's the name of your own  
18 business?  
19 A. Regulatory Assistance

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20 Corporation.

### 3. PAGE 15:04 TO 15:15 (RUNNING 00:00:27.766)

04 Q. And then in 1953 you went to  
05 work for Ciba-Geigy?

06 A. Yes.

07 Q. What kind of company is  
08 that?

09 A. Ciba-Geigy is a diversified  
10 chemical company. At the time I was  
11 employed by them we had four major  
12 divisions; an agricultural chemical  
13 division, a dyes and chemical division, a  
14 plastics and additives division, and a  
15 pharmaceutical division.

### 4. PAGE 18:18 TO 19:04 (RUNNING 00:00:29.400)

18 Q. When you were with  
19 Ciba-Geigy, did you ever have an  
20 opportunity or a situation where you  
21 assisted that company in dealings with  
22 the EPA under TSCA, the Toxic Substances  
23 Control Act?

24 A. Many times.

00019:01 Q. And in those instances,  
02 would that be related to the introduction  
03 of a chemical into the marketplace?

04 A. Among other things. Yes.

### 5. PAGE 20:10 TO 20:20 (RUNNING 00:00:25.100)

10 Q. What is TSCA?

11 A. Toxic Substances Control Act  
12 enacted October 26th, 1976.

13 Q. What does it provide?

14 A. It provides for the  
15 regulation of the introduction of new  
16 chemicals as well as the control of  
17 existing chemicals through a series of  
18 specifics contained in the fundamental  
19 statute and subsequent regulations  
20 promulgated by EPA.

### 6. PAGE 22:21 TO 23:03 (RUNNING 00:00:13.567)

21 Q. Okay. In mid 1980's did the  
22 EPA under TSCA have the authority to  
23 request health related information and  
24 environmental information from

00023:01 manufacturers of particular products?

02 A. I think they did at that  
03 time.

### 7. PAGE 24:07 TO 24:13 (RUNNING 00:00:11.000)

07 Q. Sir, based on your  
08 experience at Ciba-Geigy when you've  
09 testified that you dealt with the EPA  
10 under TSCA on hundreds of chemicals;  
11 correct?

12 A. I beg your pardon. What did  
13 you say I did?

### 8. PAGE 24:14 TO 24:19 (RUNNING 00:00:07.100)

14 Q. You dealt with the EPA or  
15 oversaw the communications with the EPA  
16 under TSCA for hundreds of chemicals;

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17 correct?  
18 A. Yes.  
19 Q. Correct?

9. PAGE 27:01 TO 27:18 (RUNNING 00:00:58.967)

00027:01 Q. Okay. Under Section 8,  
02 based on your understanding of TSCA, is  
03 there a provision that deals with  
04 supplementation of information?  
05 A. There are rules issued under  
06 Section 8 applicable to specific chemical  
07 substances. Those applicable rules  
08 require the submission of safety and  
09 health studies. And I believe there is a  
10 provision, I haven't visited that in a  
11 long time, to require the submission of  
12 any subsequently developed data, again,  
13 for those specific chemicals cited in the  
14 regulation.  
15 Q. Okay. Now, in 1984, you  
16 joined SOCMA; correct?  
17 A. Yes.  
18 Q. Tell me again what SOCMA is.

10. PAGE 28:02 TO 28:09 (RUNNING 00:00:21.066)

02 A. Synthetic Organic Chemical  
03 Manufacturers Association.  
04 Q. Okay. What purpose does it  
05 serve?  
06 A. It was a trade association  
07 representing the interests of its  
08 membership in connection with a whole  
09 variety of activities.

11. PAGE 28:10 TO 29:05 (RUNNING 00:01:01.600)

10 Q. What is the OFA?  
11 A. Well, the OFA, I assume it  
12 still is, I don't know, was the  
13 Oxygenated Fuels Association.  
14 Q. Do you know when the  
15 Oxygenated Fuels Association first began?  
16 A. I don't know precisely. It  
17 was probably 1982 or thereabouts. It was  
18 prior to my joining SOCMA.  
19 Q. What was the OFA's  
20 relationship with SOCMA back when you  
21 began employment at SOCMA?  
22 A. The easiest way to visualize  
23 SOCMA is as in a sense two separate  
24 businesses, if will you.  
00029:01 The Synthetic Organic  
02 Chemical Manufacturer itself, per se,  
03 represented several, probably in the  
04 order of 100 chemical companies that  
05 belonged to the association. It was the

12. PAGE 30:07 TO 30:22 (RUNNING 00:00:37.300)

07 was that SOCMA is a trade  
08 association on the one hand, but  
09 it was also a management  
10 organization providing  
11 infrastructural support and staff  
12 to what we refer to as special  
13 projects.  
14 BY MR. SUMMY:

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15 Q. Now, did SOCMA provide a  
16 trade association for hundreds of  
17 chemical manufacturers?  
18 A. Yes. Well, I don't know  
19 about hundreds. Circa 100.  
20 Q. Okay. Was OFA a special  
21 project of SOCMA?  
22 A. Yes.

**13. PAGE 33:01 TO 33:16 (RUNNING 00:00:57.367)**

00033:01 Q. Now in 1984, did you have  
02 any dealings with OFA?  
03 A. Yes.  
04 Q. Describe those.  
05 A. I was assigned by SOCMA to  
06 be a staff representative for OFA,  
07 provide staff support services to OFA.  
08 Q. And how would you do that?  
09 A. Convene meetings, provide  
10 minutes of meetings, make arrangements  
11 for any discussions that the members  
12 might wish to have with either our  
13 internal support staff or any external  
14 support, provide a newsletter for the  
15 association members, and assist in the  
16 recruitment of new members.

**14. PAGE 34:04 TO 34:07 (RUNNING 00:00:17.100)**

04 Q. What type of companies back  
05 in 1984 were members of OFA?  
06 A. Producers of fuel oxygenates  
07 and users of fuel oxygenates.

**15. PAGE 34:08 TO 34:21 (RUNNING 00:00:51.533)**

08 Q. Back in 1984 when you joined  
09 SOCMA, were major oil and gas companies  
10 members of OFA?  
11 A. Some as members of OFA.  
12 Q. At some point in time while  
13 serving as a staff representative with  
14 the OFA, did the OFA become interested in  
15 a chemical by the name of MTBE,  
16 Methyl-Tertiary Butyl Ether?  
17 A. Yes, they did.  
18 Q. Do you recall approximately  
19 when that was?  
20 A. That would have been  
21 basically from the 1985/1986 period.

**16. PAGE 34:22 TO 34:24 (RUNNING 00:00:10.333)**

22 Q. What is your first  
23 recollection of monitoring MTBE as a  
24 staff representative with OFA?

**17. PAGE 35:01 TO 35:06 (RUNNING 00:00:14.000)**

00035:01 A. I'm not sure I understand  
02 the question. What does monitoring mean  
03 in that context?  
04 Q. As a staff representative,  
05 keeping up with a topic of interest to  
06 your members.

**18. PAGE 35:07 TO 35:11 (RUNNING 00:00:18.600)**

07 A. Definitely from '84/'85



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08 onwards because we were interested in all  
09 oxygenates. So perhaps I should clarify  
10 and say as a staff representative, we  
11 were interested in all oxygenates.

**19. PAGE 37:11 TO 39:03 (RUNNING 00:02:17.267)**

11 Q. Back in 1984/1985 when you  
12 were a staff representative for OFA, do  
13 you recall when you first learned that  
14 MTBE was more soluble in ground water  
15 than let's say the BTEX chemicals,  
16 benzene, toluene, ethyl benzene, and  
17 xylene?  
18 A. I don't believe I ever  
19 learned that. I'm not sure that's  
20 scientifically true.  
21 Q. So your testimony is, is  
22 that as you sit here today, you don't  
23 recall ever knowing that MTBE was more  
24 soluble in ground water than the BTEX  
00038:01 chemicals?  
02 A. No, I don't.  
03 Q. Do you recall any member of  
04 OFA ever informing you of that fact?  
05 A. No. I recall discussions  
06 about MTBE, but not differential  
07 solubility.  
08 Q. Back in the 1984/'85 time  
09 frame when you were a staff  
10 representative at OFA, do you recall  
11 learning that MTBE, when released to  
12 ground water, was more mobile and  
13 traveled faster than the BTEX chemicals?  
14 A. I recall that was stated by  
15 some individuals, agencies, whatever. I  
16 don't recall that being documented.  
17 Q. Sir, do you recall, as you  
18 sit here today, any member companies of  
19 OFA informing you of the fact that once  
20 MTBE was released into ground water, that  
21 it would travel faster and further than  
22 the BTEX chemicals of gasoline?  
23 A. No, I don't recall that.  
24 I recall, as indicated,  
00039:01 discussions about MTBE and differential  
02 solubility, but not that specifically.  
03 No.

**20. PAGE 39:05 TO 39:11 (RUNNING 00:00:24.000)**

05 Sir, as you sit here today,  
06 do you recall any of the member companies  
07 of OFA informing you that MTBE was much  
08 more resistant to biodegradation than  
09 let's say the BTEX chemicals?  
10 A. No, I don't recall any  
11 discussions about biodegradation per se.

**21. PAGE 39:12 TO 40:15 (RUNNING 00:01:20.300)**

12 Q. Sir, do you recall a time  
13 back in the mid 1980's when the EPA  
14 designated MTBE under TSCA?  
15 A. Yes. I do.  
16 Q. What did it mean when the  
17 EPA placed that designation under TSCA on  
18 a chemical?



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19 A. It meant that it was going  
20 to be considered by the agency for  
21 potential testing.  
22 Q. What type of testing?  
23 A. I don't think that was at  
24 that time specified. I think it was to  
00040:01 be determined subsequently.  
02 Q. Sir, do you recall MTBE  
03 being designated by EPA under TSCA?  
04 A. Yes.  
05 Q. Do you recall approximately  
06 when that was?  
07 A. No. It would have been in  
08 the '80s, but I don't recall the precise  
09 date.  
10 Q. Okay. Do you recall at that  
11 time in the mid 1980's, after EPA  
12 designated MTBE under TSCA, that you were  
13 involved in the formation of what has  
14 become known as the MTBE Committee?  
15 A. Yes.

**22. PAGE 40:16 TO 40:19 (RUNNING 00:00:16.233)**

16 Q. Sir, do you recall when you  
17 began representing the industry as the  
18 executive director of the MTBE Committee  
19 in communications with the EPA?

**23. PAGE 40:24 TO 41:03 (RUNNING 00:00:10.166)**

24 THE WITNESS: Approximately  
00041:01 1986, I believe, was when the task  
02 force was created. I don't recall  
03 the exact date.

**24. PAGE 41:18 TO 41:21 (RUNNING 00:00:11.366)**

18 Q. Whose idea was it to form  
19 the MTBE Committee to deal with the EPA  
20 on the TSCA issue?  
21 A. Members of OFA.

**25. PAGE 43:22 TO 44:02 (RUNNING 00:00:15.033)**

22 Q. At some point in time, was  
23 there a decision made by someone to  
24 include you in communications with the  
00044:01 EPA related to MTBE?  
02 A. Yes.

**26. PAGE 45:13 TO 46:04 (RUNNING 00:00:48.300)**

13 Q. Okay. At the time that the  
14 OFA made the decision to oversee the  
15 representation of MTBE with the EPA, was  
16 the MTBE Committee formulated at that  
17 time?  
18 A. No. I think it was as a  
19 result of that.  
20 Q. Okay. Who at the OFA made  
21 the decision to oversee the  
22 communications with the EPA related MTBE?  
23 A. The OFA management  
24 committee, steering committee, whatever  
00046:01 its proper term was at the time.  
02 Q. Would that have been  
03 comprised of members of the OFA?  
04 A. Yes.

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**27. PAGE 46:05 TO 46:11 (RUNNING 00:00:25.500)**

05 Q. Do you recall who the  
06 members of the OFA were that made the  
07 decision for the OFA to oversee  
08 communications with the EPA related to  
09 MTBE?  
10 A. No, I do not recall all of  
11 them.

**28. PAGE 46:18 TO 46:20 (RUNNING 00:00:07.633)**

18 Q. Do you recall Exxon?  
19 A. Now that you mention them,  
20 yes.

**29. PAGE 47:17 TO 48:07 (RUNNING 00:00:21.900)**

17 Q. Well, if you take a look at  
18 Exhibit 2.  
19 A. Okay.  
20 Q. The title is Minutes for the  
21 Public Focus Meeting for MTBE December  
22 17th, 1986; correct?  
23 A. Yes.  
24 Q. And if you take a look at  
00048:01 about the third page, you'll see a  
02 sign-in sheet?  
03 A. Right.  
04 Q. And I believe if you look at  
05 the third name down, that is you;  
06 correct?  
07 A. Mm-hmm.

**30. PAGE 48:18 TO 49:01 (RUNNING 00:00:29.933)**

18 So initially you began  
19 showing up at the meetings with the EPA  
20 in your capacity with OFA?  
21 A. Yes.  
22 Q. Okay. Now, if you take a  
23 look at the minutes and you take a look  
24 at the first paragraph on Deposition  
00049:01 Exhibit Number 2, and if you look at

**31. PAGE 49:06 TO 50:12 (RUNNING 00:01:10.100)**

06 Q. That one right there. And  
07 if you take a look at the last two  
08 sentences of the first paragraph, it  
09 begins "an additional concern?"  
10 A. Mm-hmm. Yes.  
11 Q. It says, An additional  
12 concern brought out by TRDB research was  
13 the contamination of ground water  
14 supplies by MTBE. There are over 700,000  
15 underground storage tanks for petroleum  
16 products in the US and about 30 percent  
17 of these tanks leak.  
18 Do you see that entry?  
19 A. Yes.  
20 Q. Now, you were at this  
21 meeting of December 17th, 1986; correct?  
22 A. Yes.  
23 Q. And at this meeting, the EPA  
24 brought out an additional concern over  
00050:01 MTBE's contamination of ground water;  
02 correct?  
03 A. Yes.

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04 Q. And if you look down at the  
05 last paragraph of that document, on the  
06 first page, it says, The industry  
07 representatives were encouraged to submit  
08 supplemental information and the  
09 mandatory 8(a) and 8(d) information for  
10 the Agency's course setting process.  
11 Do you see that?  
12 A. Yes.

**32. PAGE 57:02 TO 57:06 (RUNNING 00:00:11.033)**

02 Q. Well, isn't it important  
03 that companies like ARCO Chemical  
04 Company, who do provide information to  
05 the EPA under TSCA, that that information  
06 be forthcoming and accurate?

**33. PAGE 58:13 TO 58:13 (RUNNING 00:00:02.400)**

13 I would have such an expectation.

**34. PAGE 61:05 TO 61:19 (RUNNING 00:00:35.133)**

05 Q. Have you had the opportunity  
06 to take a look at Deposition Exhibit  
07 Number 5?  
08 A. I have.  
09 Q. Deposition Exhibit Number 5  
10 is a -- the first page is a letter dated  
11 January 9th, 1987, from ARCO Chemical  
12 Company, W. J. Kilmartin to Mr. J. A. Del  
13 Pup at Texaco. And it says, Dear John:  
14 As discussed, attached is the proposal  
15 that George Dominguez from OFA made.  
16 I've included the proposed agenda for the  
17 January 16, 1987, meeting.  
18 Do you see that?  
19 A. Yes.

**35. PAGE 61:20 TO 62:01 (RUNNING 00:00:19.000)**

20 Q. And then attached to it,  
21 beginning with the second page, is a  
22 document entitled Proposal and Rationale  
23 for the Formation of an MTBE Group dated  
24 January 16th, 1986. Do you see that?  
00062:01 A. Yes.

**36. PAGE 62:02 TO 62:14 (RUNNING 00:00:37.267)**

02 Q. My question is, who drafted  
03 the proposal and rationale for the  
04 formation of an MTBE group?  
05 A. I did.  
06 Q. So you would have drafted  
07 the -- beginning with the second page of  
08 Deposition Exhibit Number 4, going all  
09 the way through the agenda. And I  
10 realize those may not be your handwritten  
11 notes on the agenda at the back of the  
12 exhibit, but would you have drafted the  
13 agenda as well?  
14 A. Yes.

**37. PAGE 62:20 TO 63:02 (RUNNING 00:00:10.833)**

20 Q. Correct. I believe that on  
21 the second January 16th, 1986, it should  
22 read 1987; correct?

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23 A. (Gesturing.)  
24 Q. Is that your understanding  
00063:01 Mr. Dominguez?  
02 A. Yes.

**38. PAGE 63:07 TO 63:12 (RUNNING 00:00:19.000)**

07 Q. What prompted you to prepare  
08 this document?  
09 A. The premise of initiating an  
10 MTBE task force necessitated inclusion of  
11 other companies that were not members of  
12 OFA.

**39. PAGE 63:19 TO 63:24 (RUNNING 00:00:21.000)**

19 Q. After you prepared the  
20 document, what did you do with it?  
21 A. As far as I recall, we sent  
22 it to OFA member companies and others  
23 that we thought might be interested in  
24 joining an MTBE organization.

**40. PAGE 66:18 TO 68:20 (RUNNING 00:01:54.433)**

18 Q. When we went off the record  
19 I was reading from the first paragraph of  
20 Deposition Exhibit Number 5 on the fourth  
21 page. It says, It is well recognized  
22 that MTBE is growing in importance. Its  
23 use in gasoline is becoming more widely  
24 accepted with a commensurate increase in  
00067:01 the volume being used.  
02 And then you say, From the  
03 perspective of its existing market share  
04 as well as to provide for additional  
05 market development, the establishment of  
06 a discrete group that could represent  
07 MTBE interests is logical at this time.  
08 In fact, the logic of establishing an  
09 MTBE group in the very near future is  
10 further reinforced by some recent  
11 developments.  
12 And the first development  
13 you state is, The potential need for  
14 testing MTBE pursuant to potential EPA  
15 actions on health hazards of MTBE and  
16 gasoline containing MTBE. Do you see  
17 that?  
18 A. Yes.  
19 Q. And then if you look down at  
20 the third bullet point you have, Possible  
21 representation with the state of Maine  
22 regarding contention that MTBE is a  
23 ground water contaminate. Do you see  
24 that?  
00068:01 A. Yes.  
02 Q. Sir, do you recall at the  
03 time that you wrote the -- this document  
04 that has a heading, The Need for  
05 Establishing an MTBE Task Force, that some  
06 regulators in the state of Maine had come  
07 out and documented a number of sites  
08 where MTBE had contaminated ground water  
09 in the state of Maine?  
10 A. I don't remember specific  
11 citations, but I, in principle, recall  
12 that.

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13 Q. If you take a look at down  
14 below there is a section called The Need  
15 for an MTBE Task Force.  
16 A. Mm-hmm.  
17 Q. And you basically document  
18 two recent issues of considerable  
19 importance to the future of MTBE. Do you  
20 see that?

41. PAGE 69:03 TO 73:02 (RUNNING 00:03:38.033)

03 THE WITNESS: Yeah, right.  
04 BY MR. SUMMY:  
05 Q. And you state there had been  
06 two recent issues of considerable  
07 importance to the future of MTBE.  
08 A. Yes.  
09 Q. Do you see that?  
10 A. Yes.  
11 Q. And one of them is EPA's  
12 examination of MTBE under TSCA; correct?  
13 A. Yes.  
14 Q. There is also a section on  
15 fuel contamination. Do you see that?  
16 A. Yes.  
17 Q. You cite that as a reason to  
18 prepare or formulate an MTBE group;  
19 correct?  
20 A. Yes.  
21 Q. And then the last issue is  
22 the Maine ground water contaminant issue.  
23 Do you see that?  
24 A. Yes.  
00070:01 Q. And you state that The state  
02 of Maine has established a maximum  
03 contaminant level of 50 parts per billion  
04 for MTBE. According to recent reports,  
05 concentrations of 690 parts per billion  
06 were found in drinking water. The Maine  
07 Department of Environmental Protection  
08 has issued a report on the hazards of  
09 MTBE as a ground water contaminant and  
10 has recommended that MTBE should be  
11 banned as a gasoline blending component  
12 or at a minimum stored in extra-secured  
13 tanks. Do you see that?  
14 A. Yes.  
15 Q. Why was the Maine ground  
16 water contaminant issue a development  
17 that you believe should lead to the  
18 formation of an MTBE group?  
19 A. I believe that it was part  
20 of enumerating concerns relative to MTBE.  
21 Q. What do you mean?  
22 A. I mean that in the context  
23 of forming an MTBE group, people are  
24 naturally interested in why should such  
00071:01 an institution be formed. On that  
02 premise you enumerate areas of actual or  
03 potential concern.  
04 Q. And why was the Maine ground  
05 water contaminant issue a concern?  
06 A. Well, clearly it imposed a  
07 potential for disruption of MTBE use,  
08 whether it be in Maine or elsewhere.  
09 Q. After that you lay out the  
10 objective of an MTBE task force. Do you

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11 see that?  
12 A. Yes.  
13 Q. And you state some of the  
14 things that the MTBE Committee would do  
15 under your view of things; correct?  
16 A. Could do.  
17 Q. Okay. And then you list out  
18 specific activities that the task force  
19 could undertake; correct?  
20 A. Yes. Correct.  
21 Q. And among those would be to  
22 liaison with the EPA regarding the ITC  
23 listing of MTBE; correct?  
24 A. Correct.  
00072:01 Q. And then on the next page  
02 you continue with the various activities  
03 the specific committee could undertake.  
04 And among those would be the development  
05 of environmental impact analysis. Do you  
06 see that?  
07 A. Yes.  
08 Q. Sir, do you know if anyone,  
09 including the MTBE Committee, ever  
10 developed an environmental impact  
11 analysis on MTBE?  
12 A. Not that I recall.  
13 Q. You also have down that one  
14 of the activities that the committee  
15 could do would be to represent MTBE  
16 interests in Maine; correct?  
17 A. Yes.  
18 Q. Also, after that would be to  
19 evaluate potential ground water  
20 contamination?  
21 A. Yes.  
22 Q. Develop market for MTBE?  
23 A. Yes.  
24 Q. And act as an informational  
00073:01 resource for MTBE; correct?  
02 A. Yes.

**42. PAGE 75:05 TO 75:21 (RUNNING 00:00:50.600)**

05 Q. Sir, have you had the  
06 opportunity to review Deposition Exhibit  
07 Number 6?  
08 A. Yes.  
09 Q. And it is a document on OFA  
10 letterhead entitled Oxygenated Fuels  
11 Association MTBE Technical Committee  
12 Meeting Minutes, dated Friday, January  
13 23rd, 1987. The meeting having taken  
14 place in Washington, DC. Do you see  
15 that?  
16 A. Yes.  
17 Q. Now, what was the purpose of  
18 this meeting?  
19 A. That was essentially an  
20 organizational meeting in connection with  
21 forming an MTBE association.

**43. PAGE 76:04 TO 76:20 (RUNNING 00:00:38.234)**

04 Q. Okay. And the minutes are  
05 dated January 23rd, 1987, but it appears  
06 that the meeting took place on Friday,  
07 January 16th, 1987; correct? And I'm  
08 looking at that in the first paragraph.

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09           A.     That is what it says. I  
10     can't account for the discrepancy.  
11           Q.     And then it provides a list  
12     of those who were in attendance at the  
13     meeting; correct? And it's the first  
14     subheading.  
15           A.     In the first page, yes.  
16           Q.     Okay. And certainly you  
17     were present at this meeting?  
18           A.     Yes.  
19           Q.     Correct?  
20           A.     Yes.

**44. PAGE 78:09 TO 80:08 (RUNNING 00:01:34.367)**

09           Q.     And what it describes there  
10     is Mr. Ed Guetens of ARCO began to  
11     explain the reasons behind establishing  
12     the group. Do you see that?  
13           A.     Yes.  
14           Q.     And if you go to the second  
15     page, page 2, in the first full  
16     paragraph, it says in this context,  
17     Mr. Guetens reviewed the information  
18     contained in the letter of invitation of  
19     the meeting, and in specific the paper  
20     prepared by Mr. Dominguez, executive  
21     director of OFA. Do you see that?  
22           A.     Yes.  
23           Q.     And there he's talking about  
24     your paper which we identified as part of  
00079:01   Deposition Exhibit Number 5, which was  
02     entitled Proposal and Rationale for the  
03     Formation of an MTBE Group; correct?  
04           A.     Yes.  
05           Q.     And after that, Mr. Guetens  
06     then outlined numerous objectives that  
07     the organization might have. Do you see  
08     those?  
09           A.     Yes.  
10           Q.     Number 1 is represent MTBE  
11     interest to EPA regarding ITC action.  
12                 Number 2, provide a form in  
13     which MTBE producers, importers and users  
14     could provide a basis for responding to  
15     environmental concerns that have been  
16     raised in a number of states regarding  
17     ground water contamination.  
18                 Number 3 is prepare  
19     technical literature.  
20                 And number 4, assist in  
21     market development by providing an  
22     organization which would be able to  
23     provide information to the government and  
24     public. Do you see that?  
00080:01   A.     Yes.  
02           Q.     And the next paragraph  
03     Mr. Guetens summarizes. He says, in  
04     summary, he indicated that serious  
05     consideration should be given to the  
06     establishment of the group. Do you see  
07     that?  
08           A.     Yes.

**45. PAGE 80:20 TO 81:05 (RUNNING 00:00:19.133)**

20           Q.     Sir, at this point in time,  
21     did you feel that it was important that



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22 such a group be established?  
23 A. Yes.  
24 Q. And why is that?  
00081:01 A. I felt that in the same  
02 context that we needed representation for  
03 oxygenated fuels, it would be  
04 appropriate, given the importance of  
05 MTBE, to have an organization for MTBE.

**46. PAGE 81:06 TO 81:15 (RUNNING 00:00:21.000)**

06 Q. Did you also feel it was  
07 important to establish a group because of  
08 the Maine, state of Maine ground water  
09 issue that had arisen?  
10 A. I believe all the points  
11 that we considered to be the  
12 justification for the group were  
13 enumerated in the rationale for the  
14 paper, I mean the rationale paper that we  
15 presented.

**47. PAGE 81:21 TO 81:24 (RUNNING 00:00:05.000)**

21 Q. And the state of Maine  
22 ground water issue was certainly one of  
23 those points; correct?  
24 A. Yes, it was.

**48. PAGE 83:10 TO 84:05 (RUNNING 00:00:41.000)**

10 Q. Now, if you look at page 3,  
11 there is a review of the ground water  
12 contamination issue. Do you see that?  
13 A. Yes.  
14 Q. And a Mr. James D. DeJovine  
15 with ARCO, it states, he reviewed the  
16 question of ground water contamination  
17 highlighting the study conducted in the  
18 state of Maine and distributed a copy of  
19 the paper entitled MTBE as a ground water  
20 Contaminant prepared by Dr. Peter  
21 Garrette, Marcel Moreau, and Jerry Lowry  
22 of the University of Maine. Do you see  
23 that?  
24 A. Yes.  
00084:01 Q. Certainly the Maine ground  
02 water issue was one of the issues that  
03 was giving rise to the need to formulate  
04 the MTBE Committee; correct?  
05 A. Yes.

**49. PAGE 84:20 TO 85:08 (RUNNING 00:00:28.000)**

20 Q. If you look at the next  
21 paragraph, it says, Mr. DeJovine  
22 indicated that other states such as North  
23 Carolina have also raised this question,  
24 and that while it was not a concern  
00085:01 raised by the ITC in their recommendation  
02 to EPA, that EPA in their December 16th,  
03 1986, focus meeting had indicated that  
04 they intended to address the  
05 environmental issue as well as the  
06 toxicological concerns raised by ITC in  
07 their review. Do you see that?  
08 A. Yes.

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**50. PAGE 89:21 TO 90:03 (RUNNING 00:00:16.000)**

21 Q. What I would like to ask you  
22 about is, what happened after this  
23 meeting? In other words, was a committee  
24 established?  
00090:01 A. An MTBE Committee?  
02 Q. Yes.  
03 A. Yes.

**51. PAGE 92:02 TO 92:18 (RUNNING 00:00:43.000)**

02 Q. Sir, have you had a chance  
03 to review Deposition Exhibit Number 7?  
04 A. Yes, I have.  
05 Q. Can you identify this  
06 document?  
07 A. MTBE Committee bylaws.  
08 Q. Sir, was this the bylaws of  
09 the MTBE Committee that was established?  
10 A. They are the proposed  
11 bylaws. I don't recall if they are  
12 exactly what was finally established.  
13 Q. Did the MTBE Committee after  
14 it was formed adopt bylaws?  
15 A. Yes, they did.  
16 Q. Do these appear to be a  
17 draft of those bylaws?  
18 A. Yes.

**52. PAGE 93:15 TO 95:09 (RUNNING 00:01:32.000)**

15 Q. Okay. Now, if you look at  
16 the bylaws, Deposition Exhibit Number 7,  
17 under paragraph 1.02, the objectives. Do  
18 you see that?  
19 A. Yes.  
20 Q. And the last sentence in  
21 that paragraph says, In particular, the  
22 Committee will: A. Address  
23 environmental, health and safety issues  
24 relating to MTBE by (i) collecting data  
00094:01 from member companies and other sources  
02 and (ii) sponsoring programs to develop  
03 data unavailable from other sources.  
04 Next page, B. Address  
05 federal and state regulatory issues  
06 relating to MTBE by (i) providing  
07 technical data to appropriate regulatory  
08 agencies and legislative bodies and (ii)  
09 meeting with appropriate governmental  
10 officials to develop acceptable  
11 solutions.  
12 C. Assist in the formation  
13 of the task force to be named the MTBE  
14 Health Effects Testing Task Force  
15 specifically for the purpose of  
16 conducting and funding testing of MTBE  
17 required under a Toxic Substances Control  
18 Act ("TSCA") Section 4 Consent Order or  
19 Test Rule.  
20 D. Make available to  
21 interested parties and the general public  
22 technical and scientific information  
23 relating to the use of MTBE in fuel.  
24 And E. Provide a form for  
00095:01 the exchange of information appropriate  
02 to the objectives stated herein above

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03 between producers and users of MTBE. Do  
04 you see that?  
05 A. Yes.  
06 Q. Is it your recollection that  
07 the bylaws that were adopted had these  
08 goals in it as well?  
09 A. Yes.

**53. PAGE 100:05 TO 100:07 (RUNNING 00:00:05.000)**

05 Q. Do you recall Exxon being a  
06 member of the MTBE Committee?  
07 A. Yes.

**54. PAGE 101:10 TO 101:16 (RUNNING 00:00:07.000)**

10 Q. Do you recall Texaco being a  
11 member of the MTBE Committee?  
12 A. Yes.  
13 Q. Do you recall Texas  
14 Petrochemical being a member of the MTBE  
15 Committee?  
16 A. Yes.

**55. PAGE 101:20 TO 102:02 (RUNNING 00:00:19.000)**

20 Q. Also attached to Deposition  
21 Exhibit Number 8 is a copy of the charter  
22 of the MTBE Committee. Do you see that?  
23 A. Yes.  
24 Q. To your recollection, is  
00102:01 that a correct statement of the charter  
02 of the MTBE Committee?

**56. PAGE 102:03 TO 102:07 (RUNNING 00:00:16.000)**

03 A. Yes.  
04 Q. In fact, does it appear to  
05 be very much the same as the objectives  
06 that are set forth in the bylaws, in  
07 Deposition Exhibit Number 7?

**57. PAGE 102:08 TO 102:13 (RUNNING 00:00:09.000)**

08 A. Yes.  
09 Q. I think in the bylaws, C,  
10 the establishment of the Health Effects  
11 Testing Task Force is the only thing  
12 that's an addition thereto; correct?  
13 A. It would so appear.

**58. PAGE 102:22 TO 103:13 (RUNNING 00:00:34.000)**

22 Q. Do you recall, sir, if the  
23 companies that were members of the  
24 committee, in fact, agreed to the charter  
00103:01 of the committee and the objectives that  
02 are stated in the bylaws?  
03 A. That was the condition of  
04 membership.  
05 Q. In fact, the charter and the  
06 objectives were agreed upon by each  
07 member company; correct?  
08 A. Insofar as I know.  
09 Q. Do you know of any company  
10 that was a member who disagreed with the  
11 charter or the objectives of the MTBE  
12 Committee?  
13 A. No, I do not.

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**59. PAGE 107:02 TO 107:05 (RUNNING 00:00:15.000)**

02 Q. Now, to your understanding  
03 was the final bylaws signed by each of  
04 the member companies?  
05 A. I believe they were.

**60. PAGE 107:06 TO 107:06 (RUNNING 00:00:00.000)**

06 Q. Okay.

**61. PAGE 108:03 TO 108:07 (RUNNING 00:00:13.000)**

03 Q. Sir, Deposition Exhibit  
04 Number 9 is entitled MTBE Health Effects  
05 Task Force Participation Agreement dated  
06 August, 1987. Do you see that?  
07 A. Yes.

**62. PAGE 109:08 TO 109:24 (RUNNING 00:00:42.000)**

08 Q. Now, what does the -- how  
09 does the Health Effects Task Force differ  
10 from the MTBE Committee?  
11 A. The Health Effects Task  
12 Force had a specific purpose which was to  
13 undertake the testing that might be  
14 required of MTBE as a result of the EPA  
15 actions.  
16 Q. Okay. And did this  
17 agreement also take into account how the  
18 cost of such testing that the EPA may  
19 require, how that would be split up among  
20 the member companies?  
21 A. It did.  
22 Q. And in fact, that was based  
23 upon the amount of MTBE that you  
24 produced. Correct?

**63. PAGE 110:05 TO 110:05 (RUNNING 00:00:00.000)**

05 A. Yes.

**64. PAGE 111:03 TO 113:02 (RUNNING 00:01:58.000)**

03 Q. Sir, Deposition Exhibit  
04 Number 10 is a telephone account, or it's  
05 an account of a telephone conversation  
06 between Beth Anderson of EPA and yourself  
07 regarding MTBE dated February 2nd, 1987;  
08 correct?  
09 A. Yes.  
10 Q. And it says, George  
11 Dominguez of Oxygenated Fuels Association  
12 (they are methanol producers) has formed  
13 an MTBE coalition. He said their MTBE  
14 Committee involves manufacturers,  
15 importers, engineering and technology. I  
16 asked if he knew of any importers (I  
17 thought we were exporting) he said they  
18 didn't have any importers at this time.  
19 And it says Dominguez is  
20 requesting all 8(a) & 8(d) information be  
21 sent to his office and EPA. He is  
22 working with manufacturers to see the  
23 February 12th deadline is met. Their  
24 MTBE Committee has 3 task forces: 1)  
00112:01 Health Effects - Steve Ridlon, ARCO,  
02 chair. 2) Exposure (includes ground

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03 water). 3) Economic impact.  
04 These task forces will  
05 review information and have their  
06 analysis ready by the end of February.  
07 Do you see that?  
08 A. Yes.  
09 Q. Now, at this date, February  
10 1987, is it your understanding that the  
11 MTBE Committee had already been formed?  
12 A. It had been formed in  
13 principle. I'm not sure it had been  
14 formed in the legal sense of formed.  
15 Q. In other words, the  
16 agreements that we looked at which were  
17 Deposition Exhibit Numbers 7 and 9, those  
18 might not have been signed, but certainly  
19 there was an agreement to have a group  
20 that would communicate with the EPA;  
21 correct?  
22 A. Yes.  
23 Q. And you were going to be the  
24 primary person responsible for that  
00113:01 communication; correct?  
02 A. Yes.

**65. PAGE 113:24 TO 114:11 (RUNNING 00:00:25.000)**

24 Q. Sir, I have handed you  
00114:01 what's been marked as Deposition Exhibit  
02 Number 11 which is a February 12th, 1987  
03 letter from you to Dr. Beth Anderson;  
04 correct?  
05 A. Yes.  
06 Q. And the top of the left hand  
07 of the letter says MTBE Committee on it?  
08 A. Correct.  
09 Q. So did the MTBE Committee  
10 have its own letterhead?  
11 A. Eventually it did.

**66. PAGE 115:02 TO 115:12 (RUNNING 00:00:19.000)**

02 Q. Okay. It says, Dear Dr.  
03 Anderson: As you know from our  
04 conversation last week, we have formed an  
05 MTBE Committee. In order to provide you  
06 with some additional information, I am  
07 pleased to attach a copy of the  
08 Committee's charter. Do you see that?  
09 A. Yes.  
10 Q. Attached to this document is  
11 a charter of the MTBE Committee; correct?  
12 A. Yes.

**67. PAGE 116:10 TO 117:01 (RUNNING 00:00:27.000)**

10 Q. Okay. And the second  
11 paragraph of this letter says, As you can  
12 see, one of our objectives is to work  
13 cooperatively with appropriate government  
14 agencies and, in that context, I am  
15 pleased to confirm that we are preparing  
16 an integrated response on behalf of the  
17 MTBE Committee to the questions raised at  
18 your December 16th focus meeting on MTBE;  
19 correct?  
20 A. Yes.  
21 Q. And at that focus meeting

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22 the EPA had raised the issue of ground  
23 water contamination related to MTBE;  
24 correct?  
00117:01 A. Yes.

**68. PAGE 118:06 TO 118:21 (RUNNING 00:00:51.000)**

06 Sir, at the time that you  
07 were working with the MTBE Committee, do  
08 you recall what your title was?  
09 A. I think it was executive  
10 director.  
11 Q. Okay. What were your duties  
12 and responsibilities as executive  
13 director of the MTBE Committee?  
14 A. Arranging meetings, hosting  
15 the meetings at our offices or other  
16 locations, in concert with the chairman  
17 of the committee preparing agendas,  
18 preparing minutes of the meetings,  
19 arranging for meetings with third  
20 parties, EPA. Participating to the  
21 extent possible in those meetings.

**69. PAGE 118:22 TO 119:22 (RUNNING 00:01:04.000)**

22 Receiving the information on production  
23 in relationship to calculation of funds.  
24 Q. Did you also assist the  
00119:01 member companies in collating information  
02 that would be sent to the EPA by the MTBE  
03 Committee?  
04 A. Yes. We collected data that  
05 was submitted to us from the member  
06 companies and transmitted some of that  
07 data to EPA.  
08 Q. Now, the data that was  
09 collected by you, was all of that  
10 information provided to you, the MTBE  
11 Committee and yourself being the  
12 executive director by member companies?  
13 A. I'm not sure I understand  
14 the question.  
15 Q. Well, did you or the OFA  
16 independently prepare information to send  
17 to the EPA?  
18 A. No.  
19 Q. In other words, you had to  
20 rely on that information to come from  
21 your member companies; correct?  
22 A. Yes.

**70. PAGE 123:05 TO 124:03 (RUNNING 00:00:52.000)**

05 And then if you take a look  
06 at the second page, Item D, it says, Item  
07 D requests more information on the  
08 presence and persistence of MTBE in  
09 ground water. Do you see that?  
10 A. Yes.  
11 Q. Do you recall that being one  
12 of the data gaps that was identified at  
13 the focus meeting that you attended?  
14 A. I recall ground water being  
15 one of the concerns raised. I don't  
16 recall the specific data gaps enumerated  
17 by EPA as such.  
18 Q. Okay. And if you look at

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19 page 3 of this exhibit, there is an  
20 attachment one, Roman Numeral III, data  
21 gaps?  
22 A. Yes.  
23 Q. And if you look down at D,  
24 it says, TRDB needs more information on  
00124:01 the presence and persistence of MTBE in  
02 ground water. Do you see that?  
03 A. Yes.

**71. PAGE 124:17 TO 127:06 (RUNNING 00:02:44.000)**

17 Q. At any time when you were  
18 executive director of the MTBE Committee,  
19 did any member company inform you of  
20 specific ground water problems they had  
21 encountered related to MTBE?  
22 A. The only references that I  
23 recall were to citations in the  
24 literature or papers, for example, the  
00125:01 Garrette paper that was mentioned  
02 earlier.  
03 I don't recall any specific  
04 indications of individual companies such  
05 as cited here.  
06 Q. Do you recall any member  
07 company of the MTBE Committee  
08 specifically informing you of a  
09 particular problem that they may have had  
10 related to ground water contamination by  
11 the chemical MTBE at one of their service  
12 stations?  
13 A. No.  
14 Q. Do you recall any other  
15 gasoline company that may not have been a  
16 member of the MTBE Committee providing  
17 you any information related to their  
18 experience of ground water contamination  
19 with MTBE at particular sites?  
20 A. No.  
21 Q. Do you recall as part of  
22 your role as executive director of MTBE  
23 Committee inquiring into the area of  
24 ground water contamination with respect  
00126:01 to your member companies?  
02 A. Yes, in the context of  
03 gathering data to be submitted in  
04 fulfillment of this data gap or in the  
05 context of the ITC requirement.  
06 Q. And how did you do that?  
07 A. We surveyed the members in  
08 terms of providing us as indicated in  
09 that telephone conversation that was  
10 summarized before with Beth Anderson. We  
11 requested the companies to provide us  
12 with data.  
13 Q. And did you contact each of  
14 the member companies to request that  
15 data?  
16 A. Not personally. If I  
17 recall, by mail.  
18 Q. Okay. And what do you  
19 recall receiving in return from the  
20 member companies by way of information  
21 related to ground water contamination?  
22 A. I just recall various  
23 studies that had been undertaken by the



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24 companies which were in turn collated and  
00127:01 submitted to the agency.  
02 Q. Do you recall any of the  
03 companies informing you of specific  
04 examples of ground water contamination by  
05 MTBE that they may have experienced at  
06 service stations?

**72. PAGE 127:11 TO 127:20 (RUNNING 00:00:20.000)**

11 THE WITNESS: No, I don't  
12 recall.  
13 BY MR. SUMMY:  
14 Q. Do you recall any of the  
15 member companies informing you that they  
16 had conducted internal studies related to  
17 MTBE and had determined that MTBE was  
18 more soluble than other gasoline  
19 components and it did not biodegrade like  
20 other gasoline components?

**73. PAGE 128:13 TO 128:16 (RUNNING 00:00:02.000)**

13 THE WITNESS: No.  
14 BY MR. SUMMY:  
15 Q. They did not provide you  
16 that information?

**74. PAGE 129:03 TO 129:03 (RUNNING 00:00:00.000)**

03 THE WITNESS: No.

**75. PAGE 131:11 TO 131:20 (RUNNING 00:00:32.000)**

11 Q. Did any of the member  
12 companies inform you that they had been  
13 members of an MTBE task force associated  
14 with API, and that as a result of that  
15 membership, they had learned that at  
16 numerous service stations there had been  
17 releases of gasoline containing MTBE, and  
18 that MTBE migrated faster and further  
19 than other chemicals of gasoline?  
20 A. No, I don't recall that.

**76. PAGE 133:11 TO 135:08 (RUNNING 00:02:03.000)**

11 Q. Did anyone at Exxon inform  
12 you in 1987 that they had learned from  
13 experiences in the early 1980 from a site  
14 in Thurmont, Maryland and another site in  
15 Jacksonville, Maryland that MTBE migrated  
16 faster and further than any other  
17 gasoline chemicals?  
18 A. No.  
19 Q. Did anyone at Exxon inform  
20 you that they had learned from their  
21 experiences in the early 1980's from  
22 releases from underground storage tanks  
23 that when the gasoline contained MTBE, it  
24 had a very low odor and taste threshold  
00134:01 much more so than the BTEX chemicals?  
02 A. No, I don't recall.  
03 Q. Did anyone at Exxon inform  
04 you that they had learned from the early  
05 1980's from their leaking underground  
06 storage tanks that MTBE cannot be removed  
07 from water by carbon absorption?  
08 A. No.

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09 Q. Did anyone at Exxon inform  
10 you that based on an internal analysis  
11 that they had done that they estimated  
12 that if MTBE were placed in the stream of  
13 commerce, that it would contaminate three  
14 times as many ground water wells in the  
15 country?

16 A. No.

17 Q. Did anyone at Exxon ever  
18 inform you that based on an internal  
19 analysis they had conducted that they  
20 estimated that if MTBE were introduced  
21 into gasoline, that their number of  
22 leaking underground storage tank  
23 incidents would double or triple?

24 A. No.

00135:01 Q. Did anyone at Exxon inform  
02 you that they had conducted an internal  
03 analysis wherein an environmental  
04 committee recommended to the management  
05 of the company that MTBE not be placed in  
06 gasoline that would be delivered along  
07 the east coast?

08 A. No.

#### 77. PAGE 136:10 TO 137:10 (RUNNING 00:01:08.000)

10 Q. Deposition Exhibit Number 13  
11 is a letter with an attachment. The  
12 letter is from you, George Dominguez,  
13 executive director of the MTBE Committee  
14 to Dr. Beth Anderson with the EPA dated  
15 February 27th, 1987; correct?

16 A. Yes.

17 Q. And it says, As you know  
18 from our earlier conversations, the MTBE  
19 Committee has recently been formed and I  
20 am pleased to submit the attached  
21 statement on behalf of the Committee  
22 relative to the Federal Register  
23 announcement of the ITC's intention to  
24 designate MTBE for priority testing  
00137:01 consideration under the Toxic Substances  
02 Control Act (51 Federal Register 41417,  
03 November 14th, 1986).

04 The submission is also  
05 intended to be responsive to discussions  
06 held at the December 16th focus meeting.  
07 Do you see that?

08 A. Yes.

09 Q. Who prepared the attachment  
10 that has a title of Comments of the MTBE

#### 78. PAGE 137:11 TO 137:13 (RUNNING 00:00:04.000)

11 Committee on the Interagency Testing  
12 Committee's Recommendations Concerning  
13 Methyl Tertiary Butyl Ether.

#### 79. PAGE 138:23 TO 140:14 (RUNNING 00:01:47.000)

23 THE WITNESS: To the best of  
24 my recollection, that was prepared  
00139:01 by the committee, that is the MTBE  
02 testing task force  
03 representatives. And then, I  
04 believe, it was finalized by  
05 counsel

MTBE - Phase 3

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06 BY MR. SUMMY:  
07 Q. By legal counsel?  
08 A. Yes.  
09 Q. Now, when you say it was  
10 prepared by the MTBE Committee, how would  
11 that have occurred?  
12 A. They would have had a  
13 meeting and reviewed the various  
14 documents referred to in the appendices  
15 and drafted a summary conclusion  
16 predicated on that review.  
17 Q. Now, this particular  
18 document was intended to answer the -- or  
19 respond to the concerns that were brought  
20 out by the EPA in the December 16th focus  
21 meeting related to MTBE ground water  
22 contamination; correct?  
23 A. In part. Yes.  
00140:01 Q. And is it your recollection  
02 that the members of the MTBE Committee  
03 had the opportunity to review this  
04 document and make any changes they saw  
05 fit prior to it being sent to the EPA?  
06 A. That is my recollection.  
07 Q. Did you draft any portions  
08 of the comments?  
09 A. I certainly drafted, as I  
10 recall, the cover letter, but I don't  
11 recall drafting the comments per se. No.  
12 Q. Now, if you look at the  
13 comments, I believe, Section II is  
14 entitled Occupational and Environmental  
Exposure.

80. PAGE 141:04 TO 141:05 (RUNNING 00:00:08.000)

04 Q. And if you look at page 12,  
05 13, and 14 of the comments.

81. PAGE 142:01 TO 143:12 (RUNNING 00:01:08.000)

00142:01 Q. Okay. There is a section  
02 called MTBE in ground water?  
03 A. Yes.  
04 Q. Do you see that?  
05 A. Yes.  
06 Q. Who would have drafted that  
07 section?  
08 A. I don't know specifically.  
09 Q. Would it have been members  
10 of the MTBE Committee?  
11 A. Oh, yes. It would have been  
12 a member of the -- either the committee  
13 or the task force. Yes.  
14 Q. Okay. And then on page 13,  
15 page 78, fax page up top, there's a  
16 section that goes from pages 13 to 14  
17 that deals with  
18 Biodegradation/Persistence. Do you see  
19 that?  
20 A. Yes.  
21 Q. Who would have drafted that  
22 section of the paper?  
23 A. Same answer. It would have  
24 been a member of the task force.  
00143:01 Q. Would you have had the  
02 expertise to draft those sections of the  
03 comments?

### MTBE - Phase 3

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04           A.     No. That's not my area of  
05 expertise.  
06           Q.     Would you have expected  
07 members of the MTBE Committee in  
08 preparing this document to respond to the  
09 EPA's concerns to be forthcoming with  
10 information and as accurate as possible?  
11           A.     That would certainly be my  
12 expectation.

**82. PAGE 145:04 TO 146:04 (RUNNING 00:01:25.000)**

04           Q.     After the comments that are  
05 listed in Deposition Exhibit Number 13  
06 were finalized by the MTBE Committee, you  
07 would then take those comments, prepare  
08 this cover letter and send it on to the  
09 EPA?  
10           A.     Yes.  
11           Q.     Would the members of MTBE  
12 Committee also get a copy of what you  
13 sent to the EPA?  
14           A.     Absolutely.  
15           Q.     Now, after this document was  
16 sent to the EPA on February 27th, 1987,  
17 do you recall providing any other  
18 information that related to the ground  
19 water issue to the EPA?  
20           A.     Not specifically, no.  
21           Q.     Sir, based on your  
22 recollection as to the final consent  
23 agreement that was entered into by the  
24 member companies and the EPA, did the EPA  
00146:01 require any environmental monitoring or  
02 testing of MTBE at manufacturing sites,  
03 terminals, or service station sites?  
04           A.     Not that I recall.

**83. PAGE 148:17 TO 149:02 (RUNNING 00:00:20.000)**

17           Q.     Do you recall any occasions  
18 where any member of the committee  
19 objected to the content of a document  
20 being submitted to the EPA concerning  
21 MTBE?  
22           A.     No, I do not.  
23           Q.     So, as best you can recall,  
24 the industry was of one mind, at least  
00149:01 concerning the documents that were  
02 submitted to the EPA?

**84. PAGE 150:08 TO 150:19 (RUNNING 00:00:22.000)**

08           THE WITNESS: Well, it  
09 represented the conclusions of  
10 those who were members. Beyond  
11 that, I have none.  
12 BY MR. MILLER:  
13           Q.     Those are the companies that  
14 you identified earlier in this  
15 deposition; is that correct?  
16           A.     Those are the companies that  
17 I enumerated and were on the list that I  
18 was shown from those that I could not  
19 recall.

**MTBE - Phase 3**

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**85. PAGE 153:21 TO 154:04 (RUNNING 00:00:14.000)**

21 Q. Sir, would the companies on  
22 this list on Exhibit 8 have been given  
23 the opportunity to attend the meeting and  
24 make any comments they wished?  
00154:01 A. Yes.  
02 Q. And certainly several of  
03 them did attend and participate?  
04 A. Yes.

**86. PAGE 154:16 TO 155:20 (RUNNING 00:00:57.000)**

16 Q. Was it your practice to  
17 circulate a copy of the document that was  
18 being considered for submission to the  
19 EPA before it was submitted to that group  
20 to get any comments, corrections, or  
21 additions from committee members that  
22 were interested in participating?  
23 A. Yes.  
24 Q. Was it also your practice to  
00155:01 circulate the final document that was  
02 sent to the EPA in to each of those  
03 members?  
04 A. Yes.  
05 Q. And do you recall any  
06 occasions where someone who failed to  
07 attend a meeting received a final version  
08 of a document and said we need to submit  
09 a correction?  
10 A. No. I have no recollection  
11 of that occurring.  
12 Q. All right. And at the time  
13 these documents were prepared, is it fair  
14 to say Exxon was the committee, sir?  
15 A. Yes.  
16 Q. ARCO?  
17 A. Yes.  
18 Q. Texaco?  
19 A. Yes.  
20 Q. Shell?

**87. PAGE 155:21 TO 156:02 (RUNNING 00:00:10.000)**

21 A. Yes.  
22 Q. And do you recall any of  
23 them objecting to the reports that were  
24 submitted to the EPA, any of the four  
00156:01 companies I just mentioned?  
02 A. No.

**88. PAGE 156:19 TO 158:04 (RUNNING 00:01:12.000)**

19 Q. Do you have Exhibit 12  
20 before you?  
21 A. Yes.  
22 Q. And just so the record is  
23 clear, this is a submission to the EPA  
24 with a cover letter signed by  
00157:01 Mr. Kilmartin; is that correct?  
02 A. Yes.  
03 Q. And he's from ARCO?  
04 A. Yes.  
05 Q. Was he an active participant  
06 in these committee meetings that we're  
07 talking about on behalf of his employer?  
08 A. I don't remember him being

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09 present at all the meetings. He was  
10 present at some.  
11 Q. Okay. The third page of the  
12 exhibit, if you could turn to that.  
13 A. Yes.  
14 Q. It has a list of data gaps?  
15 A. Yes.  
16 Q. Now, from your experience in  
17 working with the EPA over the years,  
18 could you explain what a data gap is?  
19 A. A data gap is information  
20 which the agency feels is necessary for  
21 them to assess the properties and  
22 characteristics of the substance in  
23 question.  
24 Q. This is a specific written  
00158:01 request for information to fill a gap in  
02 the information available to the EPA; is  
03 that correct?  
04 A. Well, it can take that form.

89. PAGE 158:22 TO 159:15 (RUNNING 00:00:31.000)

22 Q. Do you see the list of data  
23 gaps that's part of the exhibit?  
24 A. I do.  
00159:01 Q. Do you see one of the items  
02 that concerns ground water?  
03 A. Yes.  
04 Q. Could you read it for the  
05 record and then I'm going to ask you a  
06 question about it, please?  
07 A. Certainly.  
08 It's Item D, TRDB needs more  
09 information on the presence and  
10 persistence of MTBE in ground water.  
11 Q. Now, is that consistent with  
12 your memory that when you interacted with  
13 representatives of the EPA on MTBE, they  
14 were asking for more information on  
15 ground water?

90. PAGE 159:18 TO 162:04 (RUNNING 00:02:08.000)

18 THE WITNESS: Yes.  
19 BY MR. MILLER:  
20 Q. And did you attempt through  
21 contacts with committee members to obtain  
22 any information they had on that subject?  
23 A. Yes.  
24 Q. And is it your understanding  
00160:01 that from their participation, members of  
02 the committee were aware that the EPA  
03 wanted information on that subject?  
04 A. Yes.  
05 Q. Do you recall at any point  
06 in time any representative of the EPA  
07 saying that they had enough information  
08 on the subject of MTBE in ground water  
09 and didn't want any more?  
10 A. No.  
11 Q. Is it fair to say that  
12 throughout the time that you worked with  
13 the EPA, they were still seeking any  
14 information that the committee had  
15 available to it concerning MTBE and its  
16 potential impacts on ground water?  
17 A. Yes.

MTBE - Phase 3

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18 Q. Is it also fair to say that  
19 if you had received data showing that  
20 MTBE would adversely impact ground water,  
21 you would have known that it would be  
22 responsive to EPA request for information  
23 that you had received?  
24 A. Yes.  
00161:01 Q. And you would have provided  
02 that information had it been given to  
03 you?  
04 A. I certainly would, on my own  
05 behalf.  
06 Q. And the only reason you  
07 didn't provide information of that type  
08 is that you didn't have it; is that  
09 correct?  
10 A. Yes.  
11 Q. Now, you were relying on  
12 members of the committee to furnish you  
13 with accurate information on that  
14 subject; is that correct?  
15 A. Yes.  
16 Q. I want to contrast two  
17 things. I'm going to call gasoline  
18 without MTBE conventional gasoline. Are  
19 you comfortable with that?  
20 A. Yes.  
21 Q. And I'm going to call  
22 gasoline with MTBE, MTBE gas. Okay?  
23 A. Clear.  
24 Q. Do you recall anyone who was  
00162:01 a member of the committee advising you at  
02 any time that MTBE gasoline created more  
03 of a ground water contamination problem  
04 than conventional gasoline?

91. PAGE 162:08 TO 165:02 (RUNNING 00:03:10.000)

08 THE WITNESS: No, I don't  
09 have a recollection.  
10 BY MR. MILLER:  
11 Q. Okay. Let me show you  
12 Exhibit 2, which is dated December 17,  
13 1986.  
14 A. Okay.  
15 Q. Just so the record is clear,  
16 could you identify the document, since we  
17 haven't mentioned it in a while?  
18 A. Minutes for the Public Focus  
19 Meeting for Methyl Tert-Butyl Ether  
20 (MTBE) dated December 17, 1986.  
21 Q. If you look at the bottom of  
22 the page of these minutes, it states --  
23 A. Yes?  
24 Q. "The industry  
00163:01 representatives were encouraged to submit  
02 supplemental information and the  
03 mandatory 8(a) and 8(d) information for  
04 the Agency's course setting process."  
05 Do you see that?  
06 A. Yes.  
07 Q. Now, you're familiar with  
08 the Toxic Substances Control Act from  
09 your years of interaction with the EPA?  
10 A. Yes.  
11 Q. What does 8(a) and 8(d)  
12 refer to?



**MTBE - Phase 3**

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13 A. They refer to Section 8 of  
14 the Toxic Substances Control Act.  
15 Q. And basically it's your  
16 understanding that provides the EPA with  
17 the legal authority to require companies  
18 that have a particular product that  
19 they're interested in to submit data?  
20 A. Yes.  
21 Q. Was it your understanding  
22 that the submissions that we've talked  
23 about in this deposition by the committee  
24 were in part submissions under the Toxic  
00164:01 Substances Control Act?  
02 A. Yes.  
03 Q. And is it your understanding  
04 that any submissions about ground water  
05 would be included within that particular  
06 request for information I just quoted?  
07 A. Yes.  
08 Q. Now, if we turn to the  
09 persons who attended that meeting, do you  
10 see the sign-in sheet for the December  
11 17, 1986, meeting?  
12 A. I do.  
13 Q. The first person listed as  
14 signing in was Mr. Art Lington of Exxon  
15 Corporation; correct?  
16 A. Yes.  
17 Q. The next person is Mr. James  
18 DeJovine of ARCO Chemical; correct?  
19 A. Yes.  
20 Q. And then you're the third  
21 person who signed, listing yourself as a  
22 representative of the Oxygenated Fuels  
23 Association?  
24 A. Yes.  
00165:01 Q. So you were present?  
02 A. Yes.

**92. PAGE 165:14 TO 166:01 (RUNNING 00:00:20.000)**

14 Q. Does this appear to be a  
15 sign-in sheet that you were asked to sign  
16 at the time the meeting occurred?  
17 A. Yes.  
18 Q. And do you have any reason  
19 to believe that anyone who signed in  
20 didn't attend?  
21 A. No.  
22 Q. And that would include the  
23 individuals we just went over; is that  
24 correct?  
00166:01 A. Insofar as I know.

**93. PAGE 172:23 TO 173:04 (RUNNING 00:00:18.000)**

23 Q. Do you recall that the task  
24 force in its communications with the EPA  
00173:01 took the position that MTBE was not a  
02 persistent chemical in ground water?  
03 A. That's essentially the  
04 position. Yes.

**94. PAGE 178:14 TO 179:10 (RUNNING 00:01:00.000)**

14 Q. Do you recall that it was  
15 the MTBE's committee's position that MTBE  
16 was not a serious threat to ground water

MTBE - Phase 3

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17 in the meetings with the EPA?  
18 A. Yes, in the context of its  
19 not constituting a health or  
20 environmental hazard.  
21 Q. All right. Now, we've  
22 previously gone over a document in the  
23 form that the EPA apparently received it.  
24 I want to return to that exhibit. And I  
00179:01 want to mark what may be an earlier draft  
02 of at least part of the document as an  
03 exhibit.  
04 This document that I'm about  
05 to mark is entitled Statement of MTBE  
06 Committee Submitted to EPA, dated  
07 February 27th, 1987. It was produced to  
08 us by Exxon in this form. And it bears  
09 your signature at the end, or at least  
10 what appears to be your signature.

95. PAGE 180:02 TO 183:13 (RUNNING 00:03:02.000)

02 Q. And just so the record is  
03 clear, I provided you with an A version  
04 of which exhibit?  
05 A. 13.  
06 Q. So you have before you  
07 Exhibit 13 and another exhibit marked  
08 13a; is that correct?  
09 A. I do.  
10 Q. 13a is new. Can you tell me  
11 if it appears to bear your signature at  
12 the end?  
13 A. That is not my signature.  
14 It was signed on my behalf. It is not my  
15 signature.  
16 Q. Does it look like your  
17 secretary's version of your signature?  
18 A. Probably.  
19 Q. Okay. Does this appear to  
20 be an earlier version of the documents  
21 submitted to the EPA since your secretary  
22 signed it on your behalf and since the  
23 version submitted to the EPA appears to  
24 bear your signature, that is, Exhibit 13?  
00181:01 A. Yes.  
02 Q. Now, in this Exhibit 13a, if  
03 you could turn to the conclusion.  
04 A. (Witness complies with  
05 request.)  
06 Q. It states, "The following  
07 discussion establishes --  
08 A. We're looking at 13 at this  
09 juncture?  
10 MR. THALER: No. 13a versus  
11 13.  
12 THE WITNESS: Okay.  
13 MR. MILLER: Yes.  
14 BY MR. MILLER:  
15 Q. The following discussion  
16 establishes that there is no evidence  
17 that MTBE poses any significant risk of  
18 harm to health or the environment.  
19 Do you see that statement?  
20 A. I do.  
21 Q. And was that draft that we  
22 just went over prepared for the purpose  
23 of circulating it to members of the

**MTBE - Phase 3**

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24 committee?  
00182:01 A. It was.  
02 Q. And it would have been sent  
03 to them; is that correct?  
04 A. Yes.  
05 Q. This particular version was  
06 produced by Exxon. Do you have any  
07 reason to believe they would not have  
08 received this draft version?  
09 A. No reason to believe.  
10 Q. All right. Now, if we go to  
11 the final version submitted to the EPA,  
12 Exhibit 13, it also has a conclusion?  
13 A. It does.  
14 Q. And does it contain that  
15 same quoted statement, that MTBE does not  
16 pose any significant risk of harm to the  
17 environment?  
18 A. It does.  
19 Q. So no one asked you to  
20 change that sentence; is that correct?  
21 A. Yes.  
22 Q. It goes on to state in the  
23 same paragraph, Sufficient data exists to  
24 reasonably determine or predict that  
00183:01 manufacture, processing, distribution,  
02 use and disposal of MTBE will not have an  
03 adverse affect on health or the  
04 environment, and that testing is  
05 therefore not needed to develop such  
06 data.  
07 Do you see that quote in  
08 13a, the draft?  
09 A. Yes.  
10 Q. And after you submitted it  
11 to members of the committee, did you make  
12 any change to that portion of the  
13 conclusion?

**96. PAGE 183:14 TO 184:06 (RUNNING 00:00:22.000)**

14 A. It appears to read the same.  
15 No changes.  
16 Q. Okay. So the version you  
17 submitted to the EPA contained the same  
18 statement; correct?  
19 A. Yes.  
20 Q. In the conclusion you start  
21 out with, the following discussion  
22 establishes that there is no evidence, et  
23 cetera. Were you referring to the  
24 attachments?  
00184:01 A. Yes.  
02 Q. And they were supplied by  
03 the committee?  
04 A. Yes.  
05 Q. Now, if we could turn to  
06 Exhibit 13b, please. This version --

**97. PAGE 184:10 TO 184:12 (RUNNING 00:00:08.000)**

10 Q. This version has some of the  
11 attachments, apparently. Is that your  
12 understanding?

**98. PAGE 184:13 TO 185:12 (RUNNING 00:00:54.000)**

13 A. But this isn't the same

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14 document. This is a transmittal of  
15 studies. It's not an earlier draft of 13  
16 and 13a.  
17 Q. Okay. Let's just take it a  
18 step at a time then. Look at 13b, on the  
19 first page it's dated February 27, 1987;  
20 correct?  
21 A. Yes.  
22 Q. And at the bottom there's a  
23 signature. Is that your signature or is  
24 that your secretary's assistance?  
00185:01 A. That is my secretary's  
02 assistance signature.  
03 Q. And does it appear therefore  
04 that this version of the document would  
05 have been generated by your office?  
06 A. Yes.  
07 Q. And then attached to it is  
08 entitled Comments of the MTBE on the  
09 Interagency Testing Committee's  
10 Recommendations Concerning MTBE dated  
11 February 27, 1987; correct?  
12 A. Yes.

99. PAGE 186:04 TO 189:02 (RUNNING 00:02:55.000)

04 Q. What I'm trying to find out  
05 is if the attachments, the pages that  
06 follow the word comments of the MTBE  
07 Committee on the interagency testing  
08 committee's recommendations concerning  
09 MTBE within Exhibit 13b, whether or not  
10 the pages that follow that appear to have  
11 come from the committee.  
12 A. The answer to that is yes.  
13 Q. And if you could turn --  
14 you'll notice at the bottom of each page  
15 there's a numbering system. It begins  
16 with TX for Texaco because it was  
17 produced on their behalf. And then the  
18 number that I'm going to refer you to is  
19 page number 048941.  
20 Could you turn to that,  
21 please?  
22 A. (Witness complies with  
23 request.)  
24 Yes.  
00187:01 Q. This document has two  
02 bullets or points that are made; correct?  
03 A. Yes.  
04 Q. And the second one states,  
05 MTBE/gasoline spill - excellent aerobic  
06 biodegradability?  
07 A. Yes.  
08 Q. Did that come from you, that  
09 statement or representation?  
10 A. No.  
11 Q. Is it your understanding it  
12 came from the committee?  
13 A. Yes.  
14 Q. Now, what does that mean,  
15 excellent aerobic biodegradability?  
16 A. It means, according to this  
17 statement, that MTBE degrades readily --  
18 Q. So it --  
19 A. -- under aerobic conditions.  
20 Q. Okay. So it wouldn't be a

MTBE - Phase 3

---

21 persistent chemical, it would be one that  
22 would break down?  
23 A. Yes.  
24 Q. And was it your  
00188:01 understanding at the time that if a  
02 chemical was persistent, it would  
03 represent more of a threat to ground  
04 water than one that was readily  
05 biodegraded?  
06 A. Potentially.  
07 Q. Is it fair to say, sir, that  
08 the communications by the industry group  
09 that we've been calling the MTBE  
10 Committee, that you were the executive  
11 director of, in total assured the EPA  
12 that based on information available to  
13 industry, MTBE would not represent a  
14 significant threat to ground water?  
15 A. The reason I hesitate in  
16 that answer is I'm not sure what does  
17 industry mean again in that context. The  
18 members of the association?  
19 Q. Yes.  
20 A. Yes.  
21 Q. So, in terms of the total  
22 information that was provided through  
23 that committee, it was represented that  
24 MTBE would not pose a significant threat  
00189:01 to ground water?  
02 A. Yes.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 01:12:10.097)

# EXHIBIT 2

 Reply  Reply to all  Forward    Close  Help

From: Handel, Lauren [lhandel@mwe.com]

Sent: Thu 9/3/2009 7:19 PM

To: Marnie Riddle

Cc: Vic Sher; Nick Campins; wstack@tmo.blackberry.net; Sacripanti, Peter; Pardo, James; Bongiorno, Anthony; Riccardulli, Stephen; Kalnins Temple, Jennifer

Subject: RE: City of NY v. Exxon: Dominguez deposition

Attachments:

[View As Web Page](#)

We object to the entirety of this deposition as irrelevant to any issue to be presented to the jury. The only possible relevance of Mr. Dominguez's testimony is to Plaintiff's TSCA claim. As the Court has decided, TSCA issues will be tried separately to the Court, not the jury.

In the event that the Court allows the testimony to be played to the jury, we note the additional objection at 131:11 - 131:20 was sustained by Special Master Hedges, subject to Plaintiff establishing a connection to relevant facts under Rule 104(b).

Also, if the Court allows the testimony to be played, the following counter-designations should be added for completeness:

75:22 - 76:3

80:9 - 80:19

101:17-19

119:23 - 120:2

120:21-22

Thank you.

\*\*\*\*\*

Lauren E. Handel  
McDermott Will & Emery LLP  
340 Madison Avenue  
New York, NY 10173  
Tel: 212.547.5631  
Fax: 212.547.5444

-----Original Message-----

From: Marnie Riddle [mailto:mriddle@sherleff.com]  
Sent: Thursday, September 03, 2009 12:50 PM  
To: Handel, Lauren  
Subject: City of NY v. Exxon: Dominguez deposition

Lauren,

Does Exxon have any counterdesignations to add to Mr. Dominguez's testimony? Please let me know so I can convey that information to our video editor. Thank you.

Regards,  
Marnie

\*\*\*\*\*

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# EXHIBIT 3



Sep 15 2005  
4:26PM

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: Methyl Tertiary Butyl Ether ("MTBE")  
Products Liability Litigation

---

MDL No. 1358  
Docket No. M21-88  
Master File C.A. No.  
1:00-1898 (SAS)

**This document relates to the following cases:**

*American Distilling & Manufacturing Co., Inc. v. Amerada Hess Corp., et al.*, 04 Civ. 1719  
*City of Galva, et al. v. Amerada Hess Corp., et al.*, 04 Civ. 1723  
*City of New York v. Amerada Hess Corp., et al.*, 04-CV-03417  
*Columbia Board of Education, et al. v. Amerada Hess Corp., et al.*, 04 Civ. 1716  
*County of Suffolk v. Amerada Hess Corp., et al.*, 04 Civ. 5424  
*Orange County Water District v. Unocal Corp., et al.*, No. 04 Civ. 4968  
*Our Lady of the Rosary Chapel v. Amerada Hess Corp., et al.*, 04 Civ. 1718  
*Town of East Hampton v. Amerada Hess Corp., et al.*, 04 Civ. 1720  
*United Water Connecticut, Inc. v. Amerada Hess Corp., et al.*, 04 Civ. 1721  
*United Water New York, Inc. v. Amerada Hess Corp., et al.*, 04-CV-2389

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**DEFENDANT EXXON MOBIL CORPORATION'S RESPONSE**  
**TO MEMBERSHIP CHART**

Pursuant to the Court's directives at the hearing on August 12, 2005, Exxon Mobil Corporation ("ExxonMobil"), having made a good faith and diligent effort to ascertain the necessary information, hereby submits the following Response to the Membership Chart prepared by plaintiffs.

American Petroleum Institute ("API")

Exxon Company USA <sup>1</sup>	1975-1999
Exxon Mobil Corporation	2000-present
Mobil Oil Corporation <sup>2</sup>	1966-1999

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<sup>1</sup> Exxon Company USA was an unincorporated division of Exxon Corporation.

<sup>2</sup> Although Mobil Corporation was identified on defendants' May 20, 2005 Disclosure Pursuant to April, 20, 2005 Order, ExxonMobil has been unable to identify any information regarding the dates Mobil Corporation was an official member of API.

Oxygenated Fuels Association ("OFA")

ExxonMobil (including its related entities) is not, nor has ever been, a member of OFA.

MTBE Committee

Exxon Chemical Company 1988-1995

Dated: New York, New York  
September 15, 2005

By: 

~~Peter John Sacripanti (PS 8968)~~

~~James A. Pardo (JP 9018)~~

Stephen J. Riccardulli (SR 7784)

Jennifer N. Kalnins (JK 3274)

**McDERMOTT WILL & EMERY LLP**

50 Rockefeller Plaza

New York, New York 10020

(212) 547-5400

(212) 547-5444 (Fax)

*Attorneys for Exxon Mobil Corporation*

TO: All Counsel via LexisNexis File and Serve

# EXHIBIT 4

# EXXON CHEMICAL AMERICAS



ENVIRONMENTAL AFFAIRS DEPARTMENT

C.T. SEAY  
Manager

February 20, 1987

TSCA Public Information Office (TS-793)  
Office of Pesticides and Toxic Substances  
US Environmental Protection Agency  
Room NE-G004  
401 M Street, SW  
Washington, D. C. 20460

OPTS-41023A

Dear Sir:

This letter is in reponse to the notice (52FR3343, February 3, 1987) on solicitation of parties interested in negotiations for testing of Methyl tert-butyl ether (CASRN 1634-04-4).

Exxon Chemical Americas is a member of the MTBE Committee which is affiliated with the Oxygenated Fuels Association. We are interested in developments related to the process, but in the spirit of simplicity, we will look to the MTBE Committee for keeping us informed. We therefore wish to ensure that Mr. George Dominguez of the MTBE Committee be kept apprised of all proceedings and developments concerning MTBE testing.

Very truly yours,

A handwritten signature in cursive script, appearing to read "H. L. Hunter, Jr.", written in dark ink.

H. L. Hunter, Jr.

HLH:skm

cc: Dr. E. L. Anderson

bcc: R. A. Ganz

J. A. Zboray

D. D. Sigman

CHEMICALS-TSCA-00328

HLH:87(1)

FILES-TSCA

Ex. 17

Michael E. Miller, CSR, RMR, CRR

# EXHIBIT 5

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_ X

In re: Methyl Tertiary Butyl Ether  
("MTBE") Products Liability Litigation

\_\_\_\_\_ X

Master File No. 1:00-1898

MDL No. 1358 (SAS)

M21-88

\_\_\_\_\_ X

February 8th, 2007

\*\* MAY CONTAIN CONFIDENTIAL TESTIMONY \*\*

Oral deposition of ROBERT W.  
BILES, Ph.D., AS 30(B)(6) REPRESENTATIVE OF  
EXXONMOBIL CORPORATION, RE: TSCA, held in the  
offices of ExxonMobil Corporation, 800 Bell  
Street Houston, Texas, commencing at  
10:08 a.m., on the above date, before  
Michael E. Miller, Registered Merit Reporter  
and Certified Realtime Reporter.

GOLKOW LITIGATION TECHNOLOGIES  
1880 John F. Kennedy Boulevard  
Suite 760  
Philadelphia, Pennsylvania 19103  
888.465.5698



1 Q. Do you --

2 A. Counselor, I'm going to  
3 frustrate you, I'm sure, but this document  
4 does not appear to be -- it has the  
5 February 27th letter that does look familiar,  
6 but the rest of this document doesn't look to  
7 be a document that I remember reviewing after  
8 trying to find it in our files. Checking  
9 with Information Services, they did not have  
10 it.

11 MS. EVANGELISTI: Let's go off  
12 the record for a minute.

13 THE VIDEOGRAPHER: Going off  
14 the record. The time is approximately  
15 2:15.

16 (Discussion off the record.)

17 THE VIDEOGRAPHER: Please stand  
18 by. We're back on the record. The  
19 time is approximately 2:17.

20 BY MS. EVANGELISTI:

21 Q. Dr. Biles, we've established  
22 that on or about September -- I'm sorry,  
23 February 27th, 1987, a submission was made to  
24 the EPA by George Dominguez on behalf of the

1 MTBE Committee. We know that, right?

2 A. Correct.

3 Q. And you did your best to try to  
4 track down the full copy of that submission,  
5 but for whatever reason, you were unable to;  
6 is that a fair?

7 A. That is correct.

8 Q. So we obtained this from the  
9 EPA, "this" being Exhibit 21. Reviewing this  
10 document now -- I understand you haven't seen  
11 the whole thing for the first time. Flipping  
12 through, would you agree with me that this is  
13 likely the submission that we've been  
14 referring to that was made to the EPA on  
15 behalf of the members of the MTBE Committee  
16 in the February 1987 time frame?

17 A. The EPA has it. It's likely  
18 that it came -- Dr. Dominguez is apparently  
19 communicating it, but I haven't read this. I  
20 haven't read it in detail. It looks like  
21 it's an extensive summary.

22 It's a written summary of  
23 information that I know Dr. Lington had  
24 already presented in the December 17, '86

1 meeting with the EPA, and I think  
2 subsequently in the March 5th meeting with  
3 EPA.

4 Q. You have no reason to doubt  
5 that this is not the MTBE submission that  
6 we've been talking about, though, right?

7 A. Well, I have no reason to doubt  
8 that this was not a submission by  
9 Mr. Dominguez to the EPA discussing the  
10 health effects of MTBE with respect to the --  
11 it says the ITC, I think. I looked at the  
12 top of it. I might not be right.

13 "I'm pleased to submit the  
14 attached statement on behalf of the Committee  
15 relative to the Federal Register announcement  
16 of the ITC's intention to designate MTBE for  
17 priority testing."

18 Q. And the last sentence of that  
19 paragraph says, quote, "The submission is  
20 also intended to be responsive to discussions  
21 held at the December 16 focus meeting,"  
22 correct?

23 A. Yes.

24 Q. So he's representing, on behalf

1 of the MTBE Committee, to the EPA that not  
2 only are they going to make a statement on  
3 behalf of the committee relative to the  
4 Federal Register announcement, but  
5 specifically that the submission is intended  
6 to be responsive to the questions raised by  
7 the EPA on the --

8 A. At that meeting.

9 Q. Okay.

10 A. That is what it says, and it  
11 also says that "We'd like to meet with your  
12 staff on March 5th," and I do know of a  
13 March 5th meeting that occurred.

14 So this does look to be written  
15 detail -- and, again, I haven't seen it or  
16 read it or judged the veracity, but that's  
17 what it appears to be.

18 Q. If you'll turn to the fourth  
19 page of that document.

20 A. Is the number at the bottom 725  
21 or --

22 Q. 724.

23 A. 724? Okay.

24 Q. Sorry.

1           A.       Okay.

2           Q.       Under "Introduction," reviewing  
3   that, would you agree that the MTBE Committee  
4   in this statement is again reiterating that  
5   it would "address environmental issues  
6   relating to MTBE by collecting data from  
7   member companies and other sources and  
8   sponsoring programs to develop data  
9   unavailable from other sources," and that it  
10   would "make available" -- this is the third  
11   bullet -- "to interested parties and the  
12   general public technical and scientific  
13   information relating to the use of MTBE in  
14   fuel"?

15          A.       I -- I see that that's the  
16   third bullet that you read. I answered that  
17   question earlier when we discussed this  
18   portion, that the committee was dedicated to  
19   working cooperatively with the government and  
20   the public and be a source of information, so  
21   yes.

22          Q.       If you'll look at the next  
23   page, which ends in the Bates number 724 --

24          A.       724. Okay. Same page.

1 Q. Second -- I'm sorry, 725.

2 A. Okay.

3 Q. The second paragraph states,  
4 "In addition, Section III provides  
5 information on the positive effects of air  
6 quality of using MTBE as a fuel component, as  
7 well as an analysis of the level at which  
8 MTBE would be detected as a groundwater  
9 contaminant in the event of an accidental  
10 spill or leakage.

11 "We believe that the  
12 information provided supports the conclusion  
13 that MTBE does not represent a drinking water  
14 hazard." Do you see that?

15 A. I do.

16 Q. Would you agree -- sorry.

17 A. With the exception you -- I  
18 think you said Section III, but I think you  
19 meant Section II.

20 Q. Thank you for making that  
21 clarification.

22 A. Okay. Minor.

23 Q. Would you agree that in here,  
24 he's representing to the EPA that in

1 Section II they would provide an analysis of  
2 the level at which MTBE would be detected as  
3 a groundwater contaminant in the event of an  
4 accidental spill or leakage?

5 A. It says "as well as an analysis  
6 of the level at which MTBE would be detected  
7 as a groundwater contaminant in the event of  
8 an accidental spill or leakage." It does say  
9 that.

10 Q. And would you also agree that  
11 he, on behalf of the MTBE Committee and its  
12 members, was representing to the EPA in  
13 February of 1987 that MTBE does not represent  
14 a drinking water hazard?

15 A. The sentence in this letter  
16 says that. I did not have this letter to  
17 review, to rebut or challenge that.

18 I personally might state that  
19 that was too strong of wording. It is in the  
20 document. The OFA was chartered to represent  
21 Exxon in submissions.

22 I think this is possibly an  
23 example of letters by committee or whatever  
24 that may have been too strong, but it does

1 say, "We believe that the information  
2 provided supports the conclusion that MTBE  
3 does not represent a drinking water hazard."  
4 Trying to decipher the intent and the depth  
5 of that right now is speculation on my part.

6 Q. What do you mean, "too strong  
7 of a word"? Which word?

8 A. "Drinking water hazard."  
9 "Hazard," we go into toxicology now and  
10 industrial hygiene and epidemiology and  
11 safety. "Hazard" is a word that means  
12 something that's harmful, potentially  
13 harmful, depending on the exposure and the  
14 amount.

15 I think everybody in this room  
16 would agree that too much MTBE in drinking  
17 water could be a hazard, so this sentence  
18 is -- is not clear enough.

19 It's not -- it seems to -- you  
20 know, without -- without reading the  
21 document, I'd have to know what the document  
22 was, and I'd have to -- I was not present at  
23 the meetings with the EPA, so I cannot tell  
24 you if OFA or whoever was present at the



1 meeting said, "We don't believe MTBE can be  
2 considered a hazard in drinking water." I  
3 personally wouldn't have supported that. I  
4 don't believe Exxon or ExxonMobil would  
5 support that.

6 Q. How would you have phrased it?

7 A. At the time, or in this letter?

8 Q. Yes.

9 A. Well, again, I haven't read the  
10 document to know what is being said in here,  
11 but I think if I was just looking at this  
12 kind of a sentence, I would say, "We believe  
13 the information provided should be sufficient  
14 to support a conclusion that the hazard to  
15 humans from drinking water contamination with  
16 MTBE should be minimal."

17 But, see, then I'd have to  
18 qualify that based on all the organoleptic  
19 properties of MTBE making drinking water  
20 undrinkable at a high enough concentration,  
21 and that concentration, that high enough  
22 concentration, is still lower, much lower,  
23 than the health effects levels that we know  
24 of from our studies.

1                   So I'm just saying I -- that's  
2    what's written there, and all I can do is let  
3    you know that that is written in the  
4    document.

5           Q.       But you agree that this was  
6    written and it was a statement made on behalf  
7    of the members of the MTBE Committee,  
8    including Exxon at that time?

9           A.       I would have to say that it was  
10   represented by the Oxygenated Fuels  
11   Association, and Exxon, we've established  
12   Exxon was a member.

13          Q.       If you'll look at the next page  
14   of that exhibit, which ends in Bates  
15   number 726. And so the record is clear and  
16   since you've just seen this for the first  
17   time, if you'll look at the following page,  
18   there's a conclusion with some typing and a  
19   signature. That was the actual original page  
20   of the submission.

21                   And so the record is clear, the  
22   page before that was actually put in, I  
23   believe, by EPA because that next page was  
24   not especially clear. I can't --

1           A.       In other words, they retyped  
2   this page.

3           Q.       Right.  So you can go off  
4   whatever page you want to, but --

5           A.       Can you tell me if it's an  
6   accurate --

7           Q.       I -- it's accurate, in my  
8   opinion.  And I think you can actually read  
9   it.  I can read it.  You can look along with  
10  me, if you want to go on page 727.  If you  
11  want to look at the actual page --

12          A.       Right, it's this one.

13          Q.       -- and then read along with me,  
14  I think it's clear enough that you can read  
15  along with me.

16          A.       Okay.

17          Q.       It says, "Conclusion:  The  
18  following discussion establishes that there  
19  is no evidence that MTBE poses any  
20  significant risk of harm to health or the  
21  environment, that human exposure to MTBE and  
22  release of MTBE to the environment is  
23  negligible, that sufficient data exists to  
24  reasonably determine or protect -- predict

1    that manufacturing, processing, distribution,  
2    use, and disposal of MTBE will not have an  
3    adverse health effect" -- "health" -- I'm  
4    sorry -- "not have an adverse effect on  
5    health or the environment, and that testing  
6    is therefore not needed to develop such data.

7                   "Furthermore, issuance of a  
8    test rule requiring long-term chronic testing  
9    will have a significant adverse environmental  
10   and economic impact." Do you see that?

11           A.       I see that.

12           Q.       Aside from my tripping up, did  
13   I read that accurately?

14           A.       You read it accurately.

15           Q.       At that time, being 1987,  
16   February of 1987, did you agree that at that  
17   time there was no evidence that MTBE posed  
18   any significant risk of harm to health or the  
19   environment?

20           A.       Counselor, again, we didn't --  
21   I have not seen this document. I believe, in  
22   reading this right now, it overstates. It  
23   would not be -- that was certainly the way I  
24   would communicate it. I cannot tell you if

1 Dr. Lington reviewed this and agreed to this.

2 This does -- this does not  
3 communicate what the record continues to say  
4 subsequent to this. It seems to be a -- it  
5 seems to be an overstatement, in my opinion.

6 Q. And likewise, at that time --  
7 and we're looking only in February of 1987,  
8 because that's when this was created. Would  
9 you agree that at that time, the members of  
10 industry that did work on MTBE believed that  
11 human exposure to MTBE and release of MTBE to  
12 the environment was negligible?

13 THE WITNESS: May I ask you to  
14 restate that or say it again?

15 MS. EVANGELISTI: I'll have him  
16 read it.

17 (The following portion of the  
18 record was read.)

19 "QUESTION: And likewise, at  
20 that time -- and we're looking only in  
21 February of 1987, because that's when  
22 this was created. Would you agree  
23 that at that time, the members of  
24 industry that did work on MTBE

1           believed that human exposure to MTBE  
2           and release of MTBE to the environment  
3           was negligible?"

4           A.       You're asking a question about  
5           release and exposure, and at this time, the  
6           EPA was still asking us for information on  
7           that subject, and trying to answer in that  
8           time frame, I -- honestly, Counselor, I'd  
9           have to read this document to see what the  
10          basis is for making this statement and  
11          talking about releases to the environment and  
12          that being negligible.

13                 And I need to quickly follow  
14          up. By me saying this and saying that this  
15          statement may be a -- may be overly stated or  
16          different than I would state it myself,  
17          exposure information and documentation of  
18          health effects, specifically documentation of  
19          health effects with the exposure information  
20          that's available, our industry clearly did  
21          the testing in a negotiated manner with EPA  
22          to develop it and came to conclusions of  
23          safety to human workers -- to workers, sorry,  
24          and the general public.

1                   So without reading the text  
2   here to back up what it says here, I'm just  
3   not able to critique it.

4   BY MS. EVANGELISTI:

5           Q.       Would you agree that, first of  
6   all, this conclusion is a summary of the  
7   submission, that if one wanted to figure out  
8   the crux of the submission as you would look  
9   in an abstract for a scientific article, if  
10   you're going to look at the crux of this  
11   submission, you'd read the conclusion? Is  
12   that your understanding of this paragraph  
13   here that we're reading?

14          A.       For me, I would read the  
15   document. I'd want to know -- as I read  
16   this, I'd want to know what was the thinking  
17   and all the supporting information that would  
18   have drawn this kind of a statement.

19          Q.       But you would expect that the  
20   conclusion would summarize the data  
21   accurately?

22          A.       Well, again, I'm looking at  
23   this in 2007 eyes, so I just cannot -- I  
24   cannot answer that question.